

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

NORTH CAROLINA STATE CONFERENCE) Case No. 1:13CV658
OF THE NAACP, et al.,)
Plaintiffs,)
v.)
PATRICK MCCRORY, in his)
official capacity as the)
Governor of North Carolina,)
et al.,)
Defendants.)

LEAGUE OF WOMEN VOTERS OF) Case No 1:13CV660
NORTH CAROLINA, et al.,)
Plaintiffs,)
v.)
STATE OF NORTH CAROLINA, et al.,)

UNITED STATES OF AMERICA,) Case No. 1:13CV861
Plaintiff,)
v.)
STATE OF NORTH CAROLINA, et al.,)
Defendants.) Winston-Salem, N.C.
October 23, 2015

TRANSCRIPT OF MOTION PROCEEDINGS
BEFORE THE HONORABLE THOMAS D. SCHROEDER
UNITED STATES DISTRICT JUDGE

Proceedings reported by stenotype reporter.
Transcript produced by computer-aided transcription.

1 Carolina?

2 MR. PETERS: Yes, Your Honor.

3 THE COURT: Does North Carolina differ from
4 that?

5 MR. PETERS: I do not believe it does, Your
6 Honor. The statute says that they must consider all of
7 the evidence in the light most favorable to the voter, and
8 it specifically says that if the challenge is only as to
9 the reasonableness of the statute, it cannot be sustained,
10 that it can only be sustained if it goes to the veracity
11 of the reasonable impediment listed.

12 THE COURT: Is there any way a provisional
13 ballot in North Carolina, under your reading of the law,
14 can be rejected without first finding and notifying and
15 hearing from the affected voter?

16 MR. PETERS: If I understood the question
17 correctly, no. The voter must be notified prior to the
18 rejection of it, is my recollection.

19 THE COURT: And the voter has an opportunity to
20 be heard?

21 MR. PETERS: Yes, Your Honor.

22 THE COURT: All right.

23 MR. PETERS: I do want to mention, too, some
24 statements made earlier. What the State Board of
25 Elections said with regard to education on the Reasonable

1 Impediment Statute, was not necessarily waiting until
2 December. What they said was, they wanted the municipal
3 election cycle to run its course first. The municipal
4 election cycle will end the first Tuesday in November,
5 because they did not want confusion with voters going to
6 vote in municipal elections thinking that the photo ID
7 requirement had already come into place. They wanted
8 those to run their course and then they would start on the
9 education for the primary and what is going to be required
10 in the primary.

11 As to education of county poll workers, precinct
12 poll workers, none of that takes place until the months
13 immediately prior to an election, any way, that education.

14 THE COURT: Ordinarily.

15 MR. PETERS: Correct, Your Honor, because that's
16 when the education needs to happen, just before they are
17 going to have to carry out the duties. That's when that
18 education will happen, and the State Board has been very
19 clear, that they will educate and make sure county boards
20 educate voters on how to comply with this statute.

21 What the Plaintiffs have been told when we've
22 had discussions is, that the reason we're not laying out
23 county board directors will be told this, county workers
24 will be told that is, because it's in the statute. The
25 statute says what the County Boards of Elections must do,

1 how they must administer the statute. It lays it all out
2 there.

3 I do want to note, too, that it was said this
4 morning that people have been told for two-years that
5 without exception, they will need a photo ID in 2016, and
6 that's actually not correct. Much of the educational
7 material did specifically say, there are exceptions for
8 when a photo ID will be required.

9 THE COURT: Can you identify all the individuals
10 that you think do not have a photo ID?

11 MR. PETERS: That was the next thing I was going
12 to, Your Honor.

13 THE COURT: Because the South Carolina opinion,
14 if I recall right, seemed to indicate that somehow those
15 people were going to be notified.

16 MR. PETERS: Right. It is not the case as was
17 mentioned earlier, that people were required to sign
18 affidavits on whether or not they had a photo ID, but you
19 may recall, and there was testimony about it this summer,
20 and you may recall from personal experience, that when
21 voters voted in 2014 and 2015, they were asked if they had
22 one of the acceptable forms of ID under the statute, and
23 if a voter said, yes, it was simply noted that they had
24 said yes. If they said, no, then they were asked if they
25 needed assistance getting one, and a record was kept, so

1 that the State Board of Elections could follow-up with
2 them.

3 You may also recall, that there was testimony
4 about letters being sent to people who had appeared on the
5 no-match lists, letters sent to them. State board wrote
6 to all of those people, contacted them, heard back from
7 the majority of them that they did have IDs and did not
8 need any assistance. So they probably will not do
9 anything more with those people, because they know they
10 have the IDs.

11 THE COURT: Can you identify the people who
12 don't have IDs at this point?

13 MR. PETERS: I say it is probably more accurate
14 that there is a group of people identified for who we
15 cannot say they do have IDs. They might have IDs, but we
16 cannot say they don't. The State Board of Elections
17 continues to follow-up with those people to see if they
18 need assistance getting IDs, will continue to follow-up
19 with them, and has made it clear that the future contacts
20 with those people will include information about the
21 reasonable impediment.

22 THE COURT: Before you sit down, let me ask you,
23 I'm still trying to parse through my mind. I think you
24 agreed with me that if North Carolina had passed a statute
25 that said they were going to allow you to vote based on

1 your skin color and for two years kept it in place, let's
2 say even though it is not effective yet, so for two years
3 they say, starting in 2016, we're going to determine voter
4 eligibility based on either some clearly unconstitutional
5 factor; skin color, national origin, et cetera, but then
6 they changed the law shortly after that, that that would
7 be a case still where declaratory relief might be
8 available, there at least would be a claim for intentional
9 discrimination.

10 MR. PETERS: Your Honor, I think I agree, but
11 without the addition of, it didn't take effect at the
12 time, because I do think that is relevant, because that
13 gets into the question of what kind of relief the Court
14 can grant and what kind of meaningful relief the Court can
15 grant if the statute is amended prior to taking effect so
16 that that's no longer the issue, then --

17 THE COURT: Wouldn't the Court be able to
18 determine intent, and then grant a declaration that they
19 violated the law, and then impose -- put them back under
20 the requirement that they get preclearance?

21 MR. PETERS: Possibly.

22 THE COURT: Wouldn't that be a remedy? I mean,
23 you can debate under what circumstances the facts would
24 have to be for that to be appropriate, but wouldn't that
25 still have to at least be a claim?

1 MR. PETERS: I think that could possibly be.

2 THE COURT: What I am struggling with is, why
3 that portion of this case -- I know you disagree on the
4 merits, but why that claim is still unavailable.

5 MR. PETERS: Your Honor, I think the answer lies
6 in much of the way that the Plaintiffs have tried to
7 describe what the claim is, and the way the Plaintiffs
8 have tried to describe what that is. When they have been
9 asked this morning about their claims and how they are
10 still alive, the answer they're basically giving is,
11 because there is the potential that something could
12 happen, and we kind of need to see how things play out.

13 THE COURT: I hear all of that, but they have
14 made the argument in their briefs that if nothing else,
15 they are entitled to at least be heard as to whether or
16 not there was an intentional discrimination when it was
17 passed by legislature the first time in 2013 as to the
18 photo ID, and whether or not there are remedies available
19 on a declaratory basis. I am interested to know why that
20 is not at last a claim for 12(b)(6) purposes. You can
21 discuss the merits of it later, but it strikes me that
22 based on what you told me earlier, that that might be a
23 claim.

24 MR. PETERS: Your Honor, with your permission, I
25 think I am going to follow Mr. Glick's example, because my

1 colleague is trying to make suggestions to me, and I think
2 it will be easier if I just let him.

3 THE COURT: You can phone a friend.

4 MR. FARR: We exercise our right to have Daniel
5 Donovan accept it.

6 Your Honor, of course we don't think there was
7 intentional discrimination.

8 THE COURT: I get all that, but why is it not a
9 claim?

10 MR. FARR: Well, it is, Your Honor, but the fact
11 of the matter is, we already tried that. If you recall,
12 we had lots of testimony on photo ID in July.

13 THE COURT: But if you tried it, then I haven't
14 ruled on it, so it is still pending, so how is it mute?

15 MR. FARR: That claim, I don't think it is, Your
16 Honor. I think what we are saying is, moot is the other
17 claim related to photo ID.

18 THE COURT: My biggest concern is whether or not
19 there is no basis so that I lack subject matter
20 jurisdiction, and what I am hearing is, that the State's
21 argument, Defendant's argument is, a lot of this went to
22 the old law and that is now moot, and in a general sense
23 it might be true, but we have a new law, and it's been
24 amended, and there is also this vestige of a claim -- I
25 don't mean to describe it that way -- other than there is

1 just this little bit left as to the declaration that is
2 sought, but that there is significant remedies available
3 from that, and so if that's still pending, then I have
4 the -- to borrow Mr. Peters's phrase -- from an esoteric
5 point of view, I have the power, the authority, the
6 jurisdiction on subject matter to continue the case and
7 then consider whether to allow amendment in this case, or
8 to require them to file a new case. That's how I see it,
9 unless you can talk me out of that. It seems to me that
10 that's the legal analysis. Am I wrong about that?

11 MR. FARR: Well, Your Honor, we have made the
12 best arguments we can make on that point, and I understand
13 what the Court is saying but, again, my purpose of getting
14 up was to say --

15 THE COURT: I'm actually trying to see if you'll
16 agree with me that there is at least a declaratory claim
17 based on trial evidence. The intent part that was tried
18 and the declaration portion of the case is still forming.

19 MR. FARR: I think we tried the intent case.
20 You know, we think that there is no basis for making a
21 ruling for intentional discrimination. We think that --

22 THE COURT: Based on the evidence?

23 MR. FARR: Based on the evidence.

24 THE COURT: But if I were to disagree and
25 conclude that there were, would I not still have the power

1 to consider the remedies for that?

2 MR. FARR: Your Honor, I think as to the intent
3 claims, since it was tried, I think that's true. We're
4 saying that it's the photo ID other claims that have been
5 mooted by the amendment.

6 I fully understand your point that we're talking
7 about form over substance. You know, we would say that
8 you don't have subject matter jurisdiction to grant an
9 amendment, but we understand your position on that.

10 THE COURT: Well, Mr. Peters was exactly right,
11 though, to say it is an important issue. It is a question
12 of whether a court has the authority to rule, and that's
13 significant. And so it's not just a procedural question,
14 it is a substantive question, but the issue is, is the
15 claim as to the photo ID portion of the law now moot, and
16 that's a big proposition, because it was a large claim,
17 Section 2 claim, Fourteenth Amendment claim. There are
18 other claims.

19 As I understand it, a good part of their claim
20 now may be moot as to just the old law, but even as to
21 just the old law, they may have a claim for intent in
22 passing the old law and a violation of Section 2, and
23 potential remedies.

24 My question is: Do you agree that that part of
25 the case is still there, even though you disagree as to

1 the merit of it?

2 MR. FARR: Your Honor, certainly I think you
3 stated the Plaintiffs' position, and I don't think that
4 has gone away because of the amendment, but the fact of
5 the matter is, it was tried. We heard a lot of testimony
6 on photo ID issues at the trial, and we heard repeatedly,
7 that the Plaintiffs were offering the testimony because of
8 the issue of an intentional discrimination claim, so I'm
9 not disagreeing with you at all on that point.

10 THE COURT: All right.

11 MR. FARR: Also, Your Honor, I realize there is
12 a need to move quickly with these things, but we think --
13 we would prefer the case be put out a little bit further
14 for trial and that there be a little bit more time for
15 discovery and exchange of expert witness reports.

16 THE COURT: What do you need timewise?

17 MR. FARR: Sir?

18 THE COURT: What do you need timewise?

19 MR. FARR: Last time we had 18 experts. And,
20 you know, you've noticed that -- this is just a factor,
21 there seems to be fewer people sitting at this table than
22 there are sitting at these tables over here.

23 THE COURT: They might help you out.

24 MR. FARR: I've heard that from opposing
25 counsel. You know, if we get 18 expert witness reports

1 again, it is not realistic to think that we can respond to
2 that in 30 days and take depositions. That's just not
3 going to happen.

4 Also, Your Honor, you're aware of other trial
5 obligations we have and, you know, the Court will take
6 that into account when figuring out a trial schedule in
7 this case, but we think it is too much stuff, if you're
8 going to allow an amendment, to move forward in 60 days.

9 THE COURT: All right. Well, let me ask then,
10 since we're all here, no better time than the present.

11 MR. FARR: I do have one other thing, Your
12 Honor. You have asked a question and I feel that if I --

13 THE COURT: While you're getting ready to tell
14 me that, Mr. Donovan, count heads and tell me how many
15 experts you are going to have, because I'm going to ask
16 you that in a moment, so you'll know among the Plaintiffs.
17 So you all can pass notes and come up with a number.

18 Go ahead. I'm sorry.

19 MR. FARR: Yes, Your Honor. This is just an
20 informational issue, and Ms. Earls is free to elaborate or
21 correct me if I don't state it properly. In the State
22 Court photo ID case, the judge dismissed or denied the
23 State's motion to dismiss that case on a mootness ground,
24 and the State has appealed, so there is an appeal pending
25 in that case. I think that the -- fortunately for me, I

1 have younger and smarter lawyers who can handle filing
2 records on appeal for me at this point in time, but I
3 think that the transcript is due in that case sometime in
4 September, and then there is a process for settling the
5 record on appeal.

6 THE COURT: Is there any remedy under North
7 Carolina law on that case that would permit the imposition
8 of a declaration of violation along with a remedy, even
9 though the law has been changed, such that we have under
10 Section 2? In other words, is that a distinguishing
11 factor in this case?

12 MR. FARR: Your Honor, if I understood your
13 question, the way I would answer that is, assuming that
14 it's possible, it is not going to happen any time soon,
15 because the superior court loses jurisdiction over the
16 case once the notice of appeal is filed. So --

17 THE COURT: My question was a little different.
18 In my case, that is your case, there is a potential remedy
19 that we've been discussing about that may still remain on
20 intent for the old law.

21 MR. FARR: Right.

22 THE COURT: Under Section 2, if I find intent,
23 there are certain remedies available, including the
24 assignment of federal observers and potentially putting
25 North Carolina back under preclearance authority, which

1 might distinguish this case from the State Court case on a
2 mootness point of view because that claim is pending
3 before the Court, as you said, based on the trial this
4 summer.

5 Is there anything like that in the State Court
6 case that would provide an argument against mootness, or
7 is the remedy different in State Court, that would
8 strengthen your mootness argument?

9 MR. FARR: I'll be curious what Plaintiffs'
10 counsel has to say, Your Honor, because my reaction is,
11 that there is no similar type remedy in State Court.

12 THE COURT: Ms. Earls, is there? I'm sure I can
13 hear from her in a moment.

14 MR. FARR: I think another point Mr. Peters --
15 we're helping each other with notes today. Judge Morgan,
16 who is the State Court Judge in that case, he actually
17 entered a stay of the State Court case. I can't -- I
18 think he said that he decided to stay everything until
19 after the primary.

20 If we had not taken a notice of appeal, the
21 order of the superior court actually stayed that
22 proceeding until after the -- I guess until after the
23 March primary now, since we moved the primary to March.

24 THE COURT: Has there been any request for an
25 injunction in the State Court case?

1 MR. FARR: There wasn't before we filed the
2 notice of appeal.

3 Thank you, Your Honor.

4 THE COURT: Mr. Bowers, do you have anything?

5 MR. BOWERS: Nothing, Your Honor.

6 THE COURT: Can you tell me whether or not you
7 can represent that the Governor has no interest in
8 reverting back to the old law?

9 MR. BOWERS: Yes, sir. I can absolutely
10 represent that to the Court and to Plaintiffs' counsel.

11 THE COURT: Mr. Donovan.

12 MR. DONOVAN: On the esoteric legal point, one
13 is, there has been an admission that the claim exists, so
14 I think we're done, but I don't want to have you get lost.

15 I looked at our prayer for relief again, and I
16 don't believe it would change on amendment. We might add
17 additional allegations to flesh it out, but 589 is still
18 in effect. It is amended, but we move to declare that the
19 challenge provisions -- get an injunction on the challenge
20 provisions of H.B. 589. So that's my legal point.

21 I think as a practical matter, I would suggest
22 that their motion -- you have subject matter
23 jurisdiction -- it be denied. I am willing to amend to
24 add additional allegations to make sure we're all on the
25 same page, and I'm willing to do it quickly.

1 THE COURT: It seems to me, the character of the
2 Plaintiffs' claims is now potentially changing.

3 MR. DONOVAN: I disagree, and let me explain
4 why. I come back to the point that what Section 2 looks
5 at is the voting process; is someone denied or abridged,
6 whatever the practice is. Here, it happens to be, we use
7 it because it is in a bunch of states photo ID, and
8 they've changed it, but I come back to what the Fourth
9 Circuit said, and that is, be careful of atomizing it,
10 because it is the process, and that's what we challenge is
11 589, as we believe 589 denies or abridges
12 African-Americans and other minorities.

13 The evidence will be different because the
14 statistics are going to be different. The experts have to
15 look at a different process.

16 THE COURT: Aren't you going to have to
17 demonstrate -- you're getting the cart ahead of the
18 horse -- aren't you going to have to allege certain
19 burdens as a result of the new law and those are going to
20 have to take into account the reasonable impediment
21 declaration.

22 MR. DONOVAN: I'm going to have to prove that.
23 My allegations are no different. People,
24 African-Americans and Latinos are disproportionately
25 burdened by this process the State has put into effect

1 which puts it to the side, but we have a photo ID, but we
2 have a fine-print whether there is no photo ID, but I
3 disagree that my allegation is any different.

4 My allegation under Section 2 is the burden. My
5 proof, because my experts will do different work, will be
6 different, that I agree with. The numbers will be
7 different --

8 THE COURT: Talk to me for a minute about your
9 proof. The Defendants are saying if we have -- we had 22,
10 I think, experts, if I counted them all, and a hundred and
11 twelve, or something like that, a hundred and sixteen fact
12 witnesses.

13 MR. DONOVAN: A hundred and seventy depositions,
14 Your Honor, if you're keeping track.

15 THE COURT: My question is, is it going to be
16 like that?

17 MR. DONOVAN: I don't believe it is, and let me
18 explain why.

19 THE COURT: Are you willing to limit yourself,
20 or can you at least tell me --

21 MR. DONOVAN: I can give you my current
22 estimate. I am happy to confer and give you something in
23 writing. I can't represent for everybody.

24 The lay of the land is going to be, Your Honor,
25 I want to be clear, we are going to move to enjoin the

1 primary, if they are going to use the photo ID. We've
2 asked them to defer it, and then the State deferring the
3 trial doesn't bother me or my clients, but they are trying
4 to put us in a box. They change it two weeks before we're
5 ready to enjoin it.

6 THE COURT: Why didn't you all move to enjoin it
7 this summer? I mean, it has been 120 days and nothing has
8 happened.

9 MR. DONOVAN: A lot has happened. We actually
10 tried to work with the State, and not to get into all of
11 that, but one of our suggestions was to defer and not have
12 it in March, okay. I think we were doing a lot on that
13 front.

14 We are currently not permitted to serve
15 discovery on the schedule. That is something I was
16 planning to ask --

17 THE COURT: I'm always here.

18 MR. DONOVAN: I mean today, because now we're
19 having this argument.

20 THE COURT: So tell me how many experts are
21 you --

22 MR. DONOVAN: So we went through. I think it is
23 probably four to five, and they are really updates.
24 Probably Doctor Stewart, maybe Doctor Lichtman, Doctor
25 Burden, Doctor Webster, and possibly on lines and process,

1 because it is going to move more than likely minorities
2 into different lines than whites, but I think those are
3 updates. And a lot of it depends on the cooperation of
4 the State to provide us information on how they are going
5 to do this.

6 THE COURT: Are you anticipating fact witnesses?

7 MR. DONOVAN: Probably mostly State witnesses.

8 THE COURT: Do you know how many? You must know
9 in your mind.

10 MR. DONOVAN: My guess is three to five, because
11 it would definitely be Ms. Strach. Probably some county
12 boards and how they plan to implement it, but this is
13 information, Judge, I'm going ask for quickly, either wait
14 for the preliminary injunction, unless the State agrees to
15 defer the March implementation, and in fact, I think I'm
16 obligated **(inaudible due to someone coughing)** so again, I
17 don't have an objection. I understand Mr. Farr deferring
18 it. I have other trials set as well. I'm not in a rush,
19 but I am in a rush if it is going to harm our clients, and
20 we believe it is going to harm them.

21 THE COURT: When would you be ready for trial?

22 MR. DONOVAN: I agree to January, I can do that.
23 I agree it is going to be hard. I prefer to do it latter.

24 THE COURT: If we do a January trial, are you
25 still anticipating a preliminary injunction hearing?

1 MR. DONOVAN: I don't have an answer for you.

2 THE COURT: I'm not sure of the value of doing
3 both in such a short time frame.

4 MR. DONOVAN: I agree. My only concern is
5 whether under the case law there would be appeals, and I
6 kind of have a victory, but it is too close to the
7 election, although since Mr. Peters says it is not in
8 effect yet, I guess we're under the old ruling, so it
9 would not go into effect.

10 The biggest issue I think we need to hear from
11 the State is, do they plan to implement this in the
12 primaries, and if they do, that's our plan. I want to
13 make sure you are aware on the trial.

14 I need to confer and do some research, frankly,
15 to tell you whether I need to move in advance of January,
16 if that gets us too close.

17 THE COURT: All right. Anybody else want to be
18 heard on discovery time?

19 MR. RUSS: Your Honor, the only addition we
20 might make, co-counsel mentioned the amended complaint
21 within a week or two of the order. From the Department's
22 perspective, deliberations take sometimes two weeks. We
23 would ask for at least two weeks on any amendment on the
24 complaint. Thank you.

25 THE COURT: So if they are proposing five to

1 seven experts, and let's say three to five fact witnesses
2 that they have on their side of the case, what is kind of
3 the time period you can be ready for a trial?

4 I do have to say the case has been pending for a
5 while. I know there has been an amendment, but the
6 amendment was made by the Defendants by legislature. We
7 all have trial obligations, so I'm going to work within
8 that schedule, but --

9 MR. FARR: Your Honor, I'll just say, we prefer
10 February. Late January or early February. We really
11 prefer something later than that. I think this is a lot
12 of work to do in the time that we have allocated to us.

13 THE COURT: All right. Okay. Anybody else want
14 to be heard? Okay. Well, pending before me is the motion
15 to dismiss for lack of subject matter jurisdiction filed
16 by the Defendants based on Rule 12(b)(1) Federal Rules of
17 Civil Procedure. The argument is that the claim is moot.
18 I'm going to deny the motion. The claim is not moot. The
19 statute has been amended. At a minimum, there is still a
20 pending claim for declaratory relief as against the photo
21 ID portion of Session Law 2013-381, before it was amended
22 with Session Law 2015-103, and there are remedies
23 potentially available to the Court that have been argued
24 as to that.

25 The intent portion of the case was tried this

1 summer and remains pending before me, and so that portion
2 of the case remains, so at minimum, that portion of the
3 case is not moot.

4 It may be a fair statement that there are
5 portions of the old law that are moot in the sense that
6 they have been amended and now it is the new law that has
7 to be applied and considered, and so from that point of
8 view, there may be an argument that portions of the case
9 may have been mooted, but the statute has been amended and
10 the claim is not mooted, so the motion is denied.

11 I'm going to allow the Plaintiffs to amend,
12 those who have made claims with respect to the photo ID
13 portion of the case, and you have two weeks from today to
14 file your amended complaints. The Defendants can file
15 their responses in two weeks.

16 I'm going to look at my schedule later and
17 decide -- I'm going to tentatively set the case for trial
18 in January. I don't have a date yet. I'll try to set it
19 as late in January as I can.

20 In the meantime, I'm going to ask counsel to
21 consult and propose a pretrial schedule for a January
22 trial somewhere in the second half of the month. If you
23 can agree upon it, a discovery schedule. So, basically,
24 an amendment to your Rule 26 schedule, if you can agree
25 upon it. I do not want to reopen issues like legislature,

1 privilege and things like that, that that have already
2 been resolved and closed.

3 Discovery is now limited to the effect of the
4 amended law on the claims that are being made once they
5 are put forth in the amended pleadings.

6 I also want the parties to update their 26(a)(1)
7 disclosures as to the amended claims. Can you do that at
8 the same time you file your amended complaint and when you
9 file your response, whatever it is?

10 MR. FARR: I think that's fine with us, Your
11 Honor.

12 MR. DONOVAN: Yes, Your Honor.

13 THE COURT: I'm anticipating it may not be much
14 by way of amendment. It's been more than 120 days, I
15 believe, since the law was amended, and I know everybody
16 is busy, but time is a wasting, so I'm going to move
17 forward.

18 If you would propose a schedule that allows for
19 a trial in the second two weeks of January. You can also
20 propose how much time you think you need.

21 We tried the intent part of the case already, so
22 I'm not interested in retrying what we tried, which was
23 one of the reasons I wanted to try this all at once. But,
24 you can make an estimate of how much time you think you
25 need.

1 I'm sure we'll see each other before we have a
2 trial date, so we'll refine that. I already have lots of
3 information, so I'm really looking for updated information
4 as it relates to the new claim so that I don't have an
5 office full of duplicate notebooks of what I have received
6 twice so far in the case.

7 If you cannot agree on your Rule 26(f) pretrial
8 schedule, then agree on what you can agree on, tell me
9 what you can't agree on, and we'll get together and work
10 it out.

11 I would ask you to sit down with the magistrate
12 judge, but I think at this point we're close enough that
13 it makes more sense for us to just get together.

14 Let me ask that you all agree on your schedule
15 in ten days, so if you would file it with the Court in ten
16 days. I'm hopeful that you can agree. My default
17 position is, that both sides have had lots of time to deal
18 with this, and that I'm not going to be inclined to grant
19 lots of extensions, particularly to the Plaintiffs, if
20 they say they need more time to do things, because you've
21 been mustering your evidence for some time, so put up what
22 you have to put up. Tell them what depositions you need.
23 Go take the depositions. Defendants put up your evidence,
24 and we'll get ready for a trial.

25 I'm hopeful that you'll make a decision about

1 whether you want to move for preliminary injunction before
2 that date or not. If you decide to move for preliminary
3 injunction before that date, I may very well move the
4 trial date. I don't see any need to do both of them so
5 close together, unless you persuade me otherwise. It is
6 also possible you may agree on a preliminary injunction
7 hearing that would advance everything, and we'll just do
8 it on the merits of the preliminary injunction and resolve
9 the case. You all can agree on that whichever way you
10 want to go.

11 I'm not anticipating a lengthy trial. I'm
12 hoping you can provide the evidence you need in a short
13 period of time, so I can't imagine it would go more than a
14 week, but you all decide.

15 Now, one last word. This is a bench trial, so I
16 have watched with interest your reports as to your
17 discussions. I appreciate the fact that you all have been
18 trying to work together in trying to resolve whatever can
19 be resolved, so I'm not going to make inquiry into that,
20 but I am going to say, that it would strike me that you
21 ought to be able to come to some resolution of some of
22 the -- at least some of the issues that you seem to be
23 arguing over, in light of the body of law that exists out
24 there, particularly the South Carolina case, which this
25 seems to be patterned after.

1 The voters of this State are looking for you all
2 to resolve this in a way that gives them notice of what is
3 going on, and I hope that you all can find some way to
4 resolve your differences soon so that things can be
5 clarified, if there are questions among those who have
6 questions, about how this is going to be implemented.

7 I'll leave it at that. I encourage you strongly
8 to continue your discussions to see if you can't, in the
9 interest of the voters of North Carolina, come to some
10 resolution that helps everybody. All right.

11 Anybody have any issue that I've left unattended
12 as a result? No. Other than a ruling in the other case
13 that I'm working on. Okay. All right.

14 Thank you all for coming in. I look forward to
15 seeing you at our next opportunity, whenever that may be.
16 All right.

17 Please adjourn court.

18 (Court was adjourned.)
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